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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware corporation

Plaintiff,

v.

GRAPH FOUNDATION, INC., an Ohio  
 corporation,

Defendant.

CASE NO. 5:19-CV-06226-EJD

**DECLARATION OF CARY CHIEN IN  
 SUPPORT OF NEO4J, INC.'S MOTION  
 TO STRIKE SECOND AMENDED  
 ANSWER**

Date: August 13, 2020  
 Time: 9:00  
 Dept.: Courtroom 4, 5th Floor  
 Judge: Hon. Edward J. Davila

I, Cary Chien, declare as follows:

1. I am an attorney at law, duly licensed to practice before all courts of the State of California, and am of counsel with Hopkins & Carley, a Law Corporation, attorney of record for Plaintiff Neo4j, Inc. ("Plaintiff" or "Neo4j USA") in the above-referenced matter. I make this declaration in support of Neo4j USA's Motion to Strike Graph Foundation, Inc.'s ("Defendant" or "GFI") Second Amended Answer filed herewith in the above-captioned matter.

2. The facts stated herein are based on my personal knowledge, except with respect to those matters stated to be on information and belief, and as to those matters, I believe them to

1 be true. If called upon to testify as a witness in this matter, I could and would do so competently.

2 3. Attached hereto as **Exhibit 1** is a true and correct copy of correspondence dated  
 3 March 3, 2020 between Plaintiff's counsel Jeffrey Ratinoff and counsel for GFI John Pernick and  
 4 Related Defendants Adron Beene (carbon copying others, including myself) where Mr. Ratinoff  
 5 raised the issue of how Defendants' unclean hands affirmative defense was relevant to the  
 6 Plaintiffs' Lanham Act claims. In particular, Mr. Ratinoff stated "I am also unsure whether the  
 7 APGL/GPL issues raised by GFI's unclean hands defense can be resolved on MSJ or that it has  
 8 any bearing on the trademark issues. So, some additional clarification/explanation on  
 9 Defendants' end would be helpful before the CMC."

10 4. Attached hereto as **Exhibit 2** are true and correct copies of correspondence dated  
 11 during the March 17-23, 2020 period between Plaintiff's counsel Jeffrey Ratinoff and counsel for  
 12 GFI John Pernick and Related Defendants Adron Beene (carbon copying others, including  
 13 myself), where the appropriateness of the unclean hands affirmative defense for the first phase of  
 14 the case is discussed further and the parties decide to present the issue to the Court in a joint  
 15 statement. The Court accepted the parties' proposal to submit a joint statement on the issue.  
 16 See Dkt. No. 45 at 4:13-17.

17 5. Attached hereto as **Exhibit 3** is a true and correct copy of correspondence dated  
 18 March 30, 2020 between Plaintiff's counsel Jeffrey Ratinoff and counsel for GFI John Pernick  
 19 and Related Defendants Adron Beene (carbon copying others, including myself), where Mr.  
 20 Beene represented that he would send a position statement on behalf of Related Defendants and  
 21 GFI on the unclean hands affirmative defense issue to be included in the joint statement to the  
 22 Court. In particular, Mr. Beene stated "[w]e will work on ours and send it to you."

23 6. Attached hereto as **Exhibit 4** is a true and correct copy of correspondence dated  
 24 May 6, 2020 between Plaintiff's counsel Jeffrey Ratinoff and counsel for GFI John Pernick and  
 25 Related Defendants Adron Beene (carbon copying others, including myself), where Mr. Ratinoff  
 26 asks when Plaintiffs can expect GFI and Related Defendants' position on the unclean hands  
 27 affirmative defense. I understand there was no response to Mr. Ratinoff's email.  
 28

7. Attached hereto as **Exhibit 5** is a true and correct copy of Related Defendants' First Amended Answer to Plaintiffs' Second Amended Answer in the Related Case, *Neo4j, Inc. et al. v. PureThink LLC et al*, Case No. 5:18-cv-07182-EJD, Dkt. No. 71.

8. Attached hereto as **Exhibit 6** is a true and correct copy of Related Defendants' Related Defendants' Second Amended Counterclaim in the Related Case, *Neo4j, Inc. et al. v. PureThink LLC et al*, Case No. 5:18-cv-07182-EJD, Dkt. No. 72.

9. Attached hereto as **Exhibit 7** is a true and correct copy of Library of Congress Copyright Registration publicly available record showing Neo4j Sweden's copyright registration of its computer file, Neo4j Enterprise Edition version 3.5.4., (registration number and date: TX0008779173 / 2019-08-15) and Neo4j Enterprise Edition version 4.0 (registration number and date: TXu002177737 / 2020-01-28), from the Library of Congress Public Catalog website<sup>1</sup>.

10. Attached hereto as **Exhibit 8** is a true and correct copy of GNU General Public License (GPL) and GNU Affero General Public License (AGPL) both published by Free Software Foundation from the GNU website (URL: <http://www.gnu.org>).

11. Attached hereto as **Exhibit 9** is a true and correct copy of Neo4j USA's webpage dated October 13, 2015, (<http://www.neo4j.com/trademark-policy>), archived on July 10, 2017, which was downloaded from the Wayback Machine website, a digital archive of the World Wide Web (<https://web.archive.org>).

12. Attached hereto as **Exhibit 10** is a true and correct copy of Neo4j USA's webpage dated April 3, 2019 (<http://www.neo4j.com/trademark-policy>), which was downloaded from Neo4j's current website. This exhibit is also attached as Exhibit 2 to Plaintiff's Complaint. Dkt. No. 1, ¶ 17.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on this 26th day of June 2020, at San Jose, California.

By: /s/ Cary Chien  
Cary Chien

<sup>1</sup> <https://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?DB=local&PAGE=First>